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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,406	10/16/2003	Judy A. Martin	23380.00	7856

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EXAMINER

CARTER, MONICA SMITH

ART UNIT	PAPER NUMBER
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3722

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/685,406

Applicant(s)

MARTIN, JUDY A.

Examiner

Monica S. Carter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, 9 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (5,987,825) in view of Kim (5,123,191).

Rosen discloses a modular message center comprising a main module (1) having an upper area (3) for retaining a calendar that would, inherently, be made of an ink accepting material and a supplemental module (2) attached to the main module and having a dry-erase surface (6), wherein both the calendar and the dry-erase surface are simultaneously visible.

Rosen discloses the claimed invention except for the specific arrangement and/or content of indicia ("twelve-month chart...having vertical and horizontal parallel arranged intersecting lines....therein birthdays and other annually recurring events" and "seven parallel vertical rows...and other monthly events therein as displayed on the chart") set forth in the claim(s). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any desired indicia on the calendar and dry-erase surface, since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the

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invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of calendar and dry-erase surface does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter and the substrate, which is required for patentability.

Rosen discloses the claimed invention except for a transparent protective cover removably disposed over the calendar.

Kim discloses a wall and desk calendar device comprising a transparent vinyl front cover (15) extending from a transparent vinyl top cover (16) and a transparent vinyl back pocket cover (22) (see figure 5 and column 2, lines 17-30). Kim discloses that it is known to provide a calendar with a removable transparent protective cover. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the calendar of Rosen with a transparent protective cover, as taught by Kim, to protect the calendar from being inadvertently damaged.

Regarding claims 2-6, 12, 13, 16 and 17, see the above rejections with respect to the claimed printed matter.

Regarding claim 9, Rosen, as modified by Kim discloses the protective cover being made from a vinyl material, wherein vinyl is a plastic.

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Regarding claim 11, calendars are notoriously known for being made from paper. Therefore, it would have been obvious to provide the calendar of Rosen, as modified by Kim, of paper.

Regarding claim 14, Rosen, as modified by Kim, discloses using a dry-erase surface (6), which is equivalent to a whiteboard.

Regarding claim 15, see the above rejections to claims 1 and 11.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen in view of Kim and further in view of Selman ('282).

Rosen, as modified by Kim, discloses the claimed invention except for the protective cover being made from glass.

Selman discloses a magnetic calendar frame comprising a calendar cover (12) constructed of transparent plastic material or glass (see column 2, lines 51-53). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the calendar of Rosen with a glass protective cover, as taught by Selman, to provide a secure encasement preventing the surface from being damaged.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-6, 8, 9 and 11-17 have been considered but are moot in view of the new ground(s) of rejection.

Regarding applicant's arguments with respect to the claimed printed matter, the examiner maintains that the claimed printed matter merely comprises printed matter, which is supported by a substrate where the printed matter does not convey any meaningful information in regard to the substrate and does not require any particular substrate to effectively convey the information. Thus, there is no meaningful functional relationship between the indicia and the substrate.

The examiner asserts that the calendar of Rosen is the same structure claimed by applicant and the sole difference is in the content of the printed material. Accordingly, there being no functional relationship of the printed material to the substrate, as noted above, there is no reason to give patentable weight to the content of the printed matter which, by itself, is non-statutory subject matter.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica S. Carter whose telephone number is (571) 272-4475. The examiner can normally be reached on Monday-Thursday (6:00 AM - 3:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 11, 2005

*Monica S. Carter*  
**MONICA S. CARTER**  
**PRIMARY EXAMINER**